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ORIGINAL

## BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

KRISTIN K. MAYES - CHAIRMAN  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2010 APR 12 P 4:33

Arizona Corporation Commission

**DOCKETED**

APR 12 2010

DOCKETED BY

IN THE MATTER OF THE FORMAL  
COMPLAINT OF MARSHALL MAGRUDER  
FILED WITH THE ARIZONA CORPORATION  
COMMISSION ON DECEMBER 5, 2008.

) DOCKET NO. E-04204A-08-0589

) **MOTION TO DISMISS WITH  
PREJUDICE**

) **and**

) **MOTION TO STAY  
PROCEDURAL SCHEDULE**

UNS Electric, Inc. ("UNS Electric" or "Company") moves to dismiss with prejudice the Complaint filed by Marshall Magruder on December 5, 2008 and requests a stay of the procedural schedule (as amended in the February 3, 2010 Procedural Order) until this Motion to Dismiss is resolved.

Mr. Magruder's Complaint alleges three specific claims. In his March 22, 2010 filing, Mr. Magruder has withdrawn his second claim related to replacement of poles and cables. Even with the additional information submitted in the March 22 filing, Mr. Magruder's two remaining claims (one related to notification of customers on life support and one related to a student loan program) fail as a matter of law because (1) Mr. Magruder lacks standing to pursue either of those claims in his complaint; (2) his third claim regarding customers on life support is barred by either the doctrine of claim preclusion (*i.e.*, *res judicata*) or the doctrine of issue preclusion (*i.e.*, collateral estoppel); and (3) Mr. Magruder's first claim regarding the student-loan program is based upon a misinterpretation of both the Revised Settlement Agreement between the City of Nogales and Citizens Utilities and Decision No. 61793.

1           Moreover, as discussed below, Mr. Magruder can only represent himself in this matter.  
2           Therefore, he lacks standing to pursue any of these counts. In addition, his complaint does not  
3           state claims upon which relief can be granted and fails as a matter of law even aside from the  
4           standing issue. As a result, the entire Complaint should be dismissed with prejudice.

5           Finally, given the filing of this motion and the potential that all three of claims set forth in  
6           the Complaint may be dismissed as a matter of law, the Company requests a stay of the procedural  
7           schedule set forth in the December 8, 2009 procedural order (as modified by the February 3, 2010  
8           procedural order), including the filing date for the Company's responsive testimony (April 19) and  
9           the evidentiary hearing (set to commence May 24).

10           **I.       MR. MAGRUDER CAN ONLY REPRESENT HIMSELF IN THIS**  
11           **PROCEEDING.**

12           Mr. Magruder can only represent himself in this proceeding. The definition of the practice  
13           of law is codified in Arizona Supreme Court Rule 31. There the practice of law is defined as  
14           providing legal advice or services to or for another by and including "representing another in a  
15           judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process  
16           such as arbitrations and mediations."<sup>1</sup> This rule prohibits those from engaging in the practice of  
17           law unless they are a member of the State Bar of Arizona.<sup>2</sup> Further, Ethical Rule 5.5. (ER 5.5.) of  
18           the Professional Rules of Conduct suggests that the unauthorized practice of law should be  
19           reported to the State Bar of Arizona.<sup>3</sup> Mr. Magruder's complaint must be considered only in the  
20           context of him representing himself. Therefore, he lacks standing to pursue any of these counts, as  
21           discussed below. Otherwise, Mr. Magruder would be engaged in the unauthorized practice of law.

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23           <sup>1</sup> Ariz.Sup.Ct.R.31(a)(2)(A)(3). *See also State Bar of Ariz. v. Ariz. Land Title & Trust Co.*, 90 Ariz. 76, 95,  
24           366 P.2d 1, 14-15 (1961).

25           <sup>2</sup> *See* Ariz.Sup.Ct.R.31 (b). While there are exceptions, Mr. Magruder's participation in this case does not  
26           fit under any of them.

27           <sup>3</sup> ER 5.5. states, in part, "(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation  
          of the legal profession in that jurisdiction, *or assist another in doing so.*" [Emphasis added]. Because Mr.  
          Magruder has implied (on more than one occasion) that he is somehow speaking for officials from the City  
          of Nogales, Santa Cruz County, or customers of UNS Electric – the Company believed it necessary to raise  
          this issue here.

1       **II. MR. MAGRUDER'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT**  
2       **FAILS AS A MATTER OF LAW.**

3       **A. Mr. Magruder has withdrawn his second claim related to replacement of poles**  
4       **and cables.**

5       As set forth in his March 22, 2010 filing, Mr. Magruder has withdrawn his second claim.<sup>4</sup>  
6       This is essentially equivalent to Mr. Magruder filing a notice of dismissal.<sup>5</sup> His dismissal should  
7       be granted.<sup>6</sup> The Company also requests that this allegation be dismissed with prejudice because  
8       Mr. Magruder acknowledges that he cannot prove this claim.<sup>7</sup>

9       **B. Mr. Magruder's alleged claim regarding notifying customers on life support**  
10       **fails as a matter of law.**

11       Mr. Magruder's third claim appears to request that the Company be ordered to identify all  
12       customers that have life support equipment and provide that information to local law  
13       enforcement.<sup>8</sup> Since Mr. Magruder, and anyone in his household, is not enrolled in the  
14       Company's life support program, Mr. Magruder cannot meet the standing requirement regarding  
15       this issue. Further, Mr. Magruder has failed to identify any specific statute, Commission rule or  
16       Commission order that the Company has violated, as is required for a complaint before this  
17       Commission under A.R.S. § 40-246. Moreover, to the extent that Mr. Magruder is asserting that  
18       UNS Electric has violated Decision No. 70350, the claim has been adjudicated and is barred by the  
19       doctrine of claim preclusion. If Mr. Magruder's claim is to identify customers on life support (and  
20       not that there is a violation of Decision No. 70360), then he is barred by the doctrine of issue  
21       preclusion.

22       **1. Mr. Magruder lacks standing to pursue this claim.**

23       Mr. Magruder lacks standing because he cannot show he is part of an aggrieved class or  
24       how he has been injured. To gain standing to bring an action, a plaintiff must allege a distinct and  
25       palpable injury; an allegation of generalized harm is insufficient.<sup>9</sup> While the Arizona Constitution

26       <sup>4</sup> See Direct Testimony of Marshall Magruder at 35.

27       <sup>5</sup> See Ariz.R.Civ.P. 41(a).

<sup>6</sup> See *Goodman v. Gordon*, 103 Ariz. 538, 540, 447 P.2d 230, 232 (1968).

<sup>7</sup> See Direct Testimony of Marshall Magruder at 35.

<sup>8</sup> See Direct Testimony of Marshall Magruder at 39.

<sup>9</sup> *Sears v. Hull*, 192 Ariz. 65, 69, 961 P.2d 1013, 1017 (1998).

1 does not contain a “case or controversy” provision, Arizona courts have consistently required a  
2 party to possess standing to maintain an action – as a matter of judicial restraint.<sup>10</sup> Only in cases  
3 of “great public importance that are likely to recur” have courts been willing to forego the standing  
4 requirement.<sup>11</sup> Here, Mr. Magruder provides no information to indicate how he has suffered a  
5 specific injury with respect to this claim. He has never even alleged that he is a customer with life  
6 support equipment. Because Mr. Magruder must be representing himself in this proceeding, he  
7 cannot claim to represent any group of customers on life support equipment who are allegedly  
8 harmed by the Company’s current policy. Thus, the lack of standing requires dismissal of this  
9 claim.

10 **2. The third claim is deficient because it does not sufficiently allege a**  
11 **violation of any provision of the law or of a Commission rule or order.**

12 Neither the Complaint nor the March 22 filing identify any specific provisions of law or  
13 any specific Commission rule or order that the Company has violated with respect to notification  
14 of customers with life support equipment in the event of an outage. Mr. Magruder does refer to  
15 the 2006 UNS Electric rate case docket and a question posed by Commissioner Gleason, but never  
16 alleges a specific violation of the order in that case (Decision No. 70360). As a result, the claim  
17 fails under A.R.S. §40-246.

18 **3. If Mr. Magruder is alleging the Company is not in compliance with**  
19 **Decision No. 70360, then the doctrine of claim preclusion bars his**  
20 **claim.**

21 Claim preclusion applies when a party has brought an action and final, valid judgment is  
22 entered after adjudication.<sup>12</sup> Claim preclusion protects parties from the burden of re-litigating the  
23 same claim and preventing needless litigation, promoting finality and deterring harassment.<sup>13</sup> If  
24 Mr. Magruder is alleging that Decision No. 70360 requires the Company must provide the certain  
25 notification to customers with life support equipment, the December 8, 2009 Procedural Order<sup>14</sup>

26 <sup>10</sup> *Sears*, 192 Ariz. at 71, 961 P.2d at 1019.

27 <sup>11</sup> *See Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, 108 P.3d 917, 919 (2005).

<sup>12</sup> *Circle K Corp. v. Industrial Comm’n of Arizona*, 179 Ariz. 422, 425, 880 P.2d 642, 645 (App. 1993).

<sup>13</sup> *Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (1999).

<sup>14</sup> Docket No. E-04204A-06-0783.

1 decided that claim to the contrary. Specifically, that Procedural Order stated that "Decision No.  
2 70360 did not adopt Mr. Magruder's proposal and does not require additional action by [UNS  
3 Electric]."<sup>15</sup> The Commission's Compliance Section had already found that the Company  
4 complied with Decision No. 70360, including the ordering provision regarding the outage  
5 notification issue.<sup>16</sup> A companion procedural order issued in this docket (also on December 8,  
6 2009) allowed Mr. Magruder to file testimony because "Mr. Magruder continues to believe that  
7 [UNS Electric] is not in compliance with earlier Commission orders or rules";<sup>17</sup> but, as noted  
8 above, Mr. Magruder has failed to identify any such violations. Mr. Magruder's attempt to re-  
9 litigate whether UNS Electric is required to provide the notification desired by Mr. Magruder is  
10 now barred.

11 **4. If Mr. Magruder is alleging that the Company should identify all**  
12 **customers with life support equipment, then the doctrine of issue**  
13 **preclusion bars his claim.**

14 If Mr. Magruder's allegation regarding life support notification is independent of Decision  
15 No. 70360, then that allegation is also barred due to the doctrine of issue preclusion. Issue  
16 preclusion occurs when (1) the issue to be litigated was actually litigated in a prior proceeding; (2)  
17 a final judgment was entered; (3) the party that issue preclusion is to be invoked against had a full  
18 opportunity to litigate the issue; (4) that party did litigate the issue; and (5) the issue was essential  
19 to the final judgment.<sup>18</sup> Here, Mr. Magruder litigated the issue regarding whether the Company  
20 should identify all customers with life-support equipment and provide that to law enforcement in

21 <sup>15</sup> See Procedural Order in Docket No. E-04204A-06-0783 (December 8, 2009) at 3.

22 <sup>16</sup> See the Compliance Memorandum from Commission Staff – attached as Exhibit 1 to this Motion.  
23 Further, UNS Electric explained (in its August 25, 2008 Compliance Filing in the rate case docket) how the  
24 Company had met with representatives of the Santa Cruz County Sheriff's Department. The Sheriff's  
25 Department has not assumed the obligation to contact life support customers in the event of an outage.  
26 Further, only nine out of the 48 C.A.R.E.S.-M Program participants agreed to have their information  
27 released to the Sheriff's Department. That filing details the attempts made to contact these customers as  
well as discussions with the Sheriff's Department. See UNS Electric's Response to Marshall Magruder's  
Complaint (December 29, 2008) at 4, and Exhibit C (which is UNS Electric, Inc.'s Compliance Filing  
Regarding Procedures for Outage Notification for Life Support Customers dated August 25, 2008).

<sup>17</sup> See Procedural Order (December 8, 2009) in this Docket. The procedural schedule was amended on  
February 3, 2010 through a subsequent procedural order.

<sup>18</sup> *Circle K*, 880 P.2d at 645; see also *Campbell v. SZL Properties, Ltd.*, 204 Ariz. 221, 223, 62 P.3d 966,  
968 (App. 2003).

1 UNS Electric's last rate case. Decision No. 70360 did not adopt his proposal. Mr. Magruder was  
2 given full and fair opportunity to present his position in that rate case as an intervening party.  
3 Thus, this issue is precluded as the Commission has already entered two judgments rejecting Mr.  
4 Magruder's claim that the Company has this obligation.<sup>19</sup> And the issue of whether UNS Electric  
5 should be obligated or was required to such notification must have been decided for the  
6 determinations to be rendered in both Decision No. 70360 and the subsequent December 8, 2009  
7 Procedural Order.

8           **C. Mr. Magruder's allegations related to a student-loan program suffer from**  
9           **multiple legal deficiencies.**

10           In the first claim of his complaint, Mr. Magruder accuses the Company of failing to fund  
11 interest-free loans to graduating seniors of high schools within Santa Cruz County, apparently in  
12 violation of Decision No. 61793. This claim should be dismissed because: (1) Mr. Magruder  
13 lacks standing to pursue this claim; (2) he misinterprets Decision No. 61793; (3) he misinterprets  
14 the Revised Settlement Agreement referenced in that decision; and (4) UNS Electric did not  
15 assume the Revised Settlement Agreement as a liability. Further, Mr. Magruder cannot amend his  
16 complaint to resolve these deficiencies and no factual basis can be established where Mr.  
17 Magruder can prevail.

18           **1. Mr. Magruder lacks standing to pursue this claim.**

19           Mr. Magruder provides no information to indicate how he has suffered a specific injury  
20 with respect to this claim either. This involves what is essentially a provision of a private contract  
21 between two parties and where he was not a representative of either of those parties. Moreover,  
22 Mr. Magruder is not a representative of the City of Nogales and can only represent himself in  
23 these proceedings. He alleges no distinct and palpable injury to him caused by the alleged actions  
24 of the Company. He cannot pursue or enforce a perceived breach of the Revised Settlement  
25 Agreement between the City of Nogales and Citizens Utilities Company ("Citizens") to which he  
26

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27 <sup>19</sup> Both Decision No. 70360 and the subsequent December 8, 2009 Procedural Order in Docket No. E-04204A-06-0783 did not adopt Mr. Magruder's proposal.

1 is not a party. Therefore, he simply cannot meet the standing requirement. And there is no  
2 justification to waive that requirement.

3 **2. Mr. Magruder misinterprets Decision No. 61793.**

4 Decision No. 61793 only dismissed the complaint by the City of Nogales against Citizens  
5 with prejudice. It did not, as Mr. Magruder alleges, adopt any of the provisions within the Revised  
6 Settlement Agreement (between the City of Nogales and Citizens) as Commission requirements.<sup>20</sup>  
7 Further, the Decision states “the parties have resolved their differences and the Complaint should  
8 be dismissed with prejudice.”<sup>21</sup> Nowhere did it state that the Commission intended to adopt those  
9 requirements; thus, the Revised Settlement Agreement remains a private contract between the  
10 parties. As a result, there is no violation of Decision No. 61793. Any issue of contention  
11 regarding the alleged student-loan program would be a breach of contract issue that is best left to  
12 the courts, particularly because this issue is not one where the Commission’s specialized expertise  
13 or experience is necessary. In other words, this is not a case where the doctrine of primary  
14 jurisdiction demands Commission adjudication.<sup>22</sup>

15 **3. UniSource Energy Corporation (and therefore UNS Electric) did not**  
16 **assume obligations under the Revised Settlement Agreement.**

17 Neither UNS Electric, nor any of its affiliates (or ultimate parent UniSource Energy  
18 Corporation), adopted, as an assumed liability, the Revised Settlement Agreement referred to in  
19 Decision No. 61793.<sup>23</sup> To the contrary, Mr. Magruder points to no evidence showing that the  
20 Company assumed the obligations under that agreement. While Mr. Magruder’s testimony is  
21 littered with his own opinions and conclusions on this issue, he refers to no empirical facts  
22

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23 <sup>20</sup> See Decision No. 61793 at 4 (stating “IT IS THEREFORE ORDERED that the Amended Complaint  
24 filed by the City of Nogales against Citizens Utilities Company is dismissed with prejudice.”). Decision  
No. 61793 is attached to this Motion as Exhibit 2.

25 <sup>21</sup> Decision No. 61793 at 4 (Conclusion of Law No. 3).

26 <sup>22</sup> Compare with *Campbell v. Mountain State Tel. and Tel. Co.*, 120 Ariz. 426, 430, 586 P.2d 987, 991  
(App. 1978) (quoting *Far East Conference v. U.S.*, 342 U.S. 570, 574-75 (1952)).

27 <sup>23</sup> See relevant excerpts from Asset Purchase Agreement and Schedule 2.3(i) (October 29, 2002) attached  
as Exhibit 3. While UniSource assumed certain liabilities from Citizens, the Revised Settlement Agreement  
was intentionally deleted from that portion of the Asset Purchase Agreement because no issues were open  
regarding the matter and the City of Nogales’ complaint was dismissed with prejudice.

1 supporting his assertions. In short, Mr. Magruder provides no facts that can be substantiated that  
2 UNS Electric agreed to take on that obligation. While UNS Electric continues to work with the  
3 City of Nogales to institute a program that meets the spirit of what was in the Revised Settlement  
4 Agreement, this alone does not support Mr. Magruder's allegation. Because Mr. Magruder cannot  
5 point to any facts that would support his claim, dismissal with prejudice is warranted.

6 **4. Mr. Magruder misinterprets the Revised Settlement Agreement.**

7 Mr. Magruder also misinterprets Section 9 of the Revised Settlement Agreement itself.  
8 The applicable language clearly states that the City of Nogales and Citizens are *both jointly*  
9 responsible for implementing a program to benefit high school seniors in Santa Cruz County:

10 Following the Parties' execution of this Revised Settlement Agreement, *the City*  
11 *and Citizens will work together to develop an educational assistance program* to  
12 assist worthy Santa Cruz County high-school seniors [to] attend the Arizona  
13 college of their choice. Each year, the program will select *one County senior for a*  
14 *four-year, interest free loan* to assist with tuition books and miscellaneous college  
expenses. If, following graduation, the student returns to Santa Cruz County to live  
and work, the loan will be forgiven. Citizens will contribute \$3,000 per year, per  
student, toward this program.<sup>24</sup>

15 Despite Mr. Magruder's many accusations, he cannot substantiate with any evidence that  
16 UNS Electric has failed to work with the City of Nogales. Assuming the other deficiencies with  
17 this claim could be cured; Mr. Magruder has not provided any testimony or documentation  
18 showing how the Company has failed to work with the City of Nogales.<sup>25</sup> Again, if the City of  
19 Nogales believes the UNS Electric has failed to meet its obligations under the Revised Settlement  
20 Agreement, it could bring an action against UNS Electric in court. As noted above, Mr. Magruder  
21 is not the proper party to attempt to enforce any legal rights that the City of Nogales may have

22  
23 <sup>24</sup> See the Revised Settlement Agreement (attached to Decision No. 61793 as Exhibit A) at 7.

24 <sup>25</sup> UNS Electric made a compliance filing with the Commission noting several deficiencies with the current  
25 educational assistance program. The filing also highlighted how UNS Electric representatives met with  
26 officials from the City of Nogales, city and county school officials and Commission Staff to implement a  
27 new College Assistance Program to be funded by UNS Electric. See UNS Electric's Response to Marshall  
Magruder's Complaint (December 29, 2008) at 3, and Exhibit B (which is UNS Electric, Inc's Compliance  
Filing Regarding Citizens Utilities Educational Assistance Program dated August 25, 2008). Moreover,  
UNS Electric voluntarily awarded (in May of 2009) four \$2,000 scholarships to graduating seniors from  
Nogales High School and Rio Rico High School – selected by the Nogales Education Foundation and Rio  
Rico High School. See UNS Electric, Inc Status Update (July 13, 2009).



1 against UNS Electric under the Revised Settlement Agreement nor can he represent the City's  
2 interests in this proceeding.

3  
4 **Relief Requested.**

5 The claims in Mr. Magruder's Complaint have been withdrawn, are barred or otherwise  
6 fail to state a claim upon which relief can be granted. Moreover, Mr. Magruder lacks standing to  
7 assert these claims. Mr. Magruder has had a full and complete opportunity to demonstrate any  
8 basis for his three claims. He has failed to do so. Mr. Magruder's complaint fails as a matter of  
9 law and should be dismissed with prejudice.

10 Moreover, the Company requests a stay of the procedural schedule set forth in the  
11 December 8, 2009 procedural order (as modified by the February 3, 2010 procedural order),  
12 including the filing date for the Company's responsive testimony (April 19) and the evidentiary  
13 hearing (set to commence May 24), until this Motion to Dismiss is resolved.

14 WHEREFORE, UNS Electric respectfully requests that its Motion to Dismiss be granted  
15 and that Plaintiff's Complaint be dismissed with prejudice.

16 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of April 2009.

17 UNS Electric, Inc.

18  
19 By 

20 Michael W. Patten  
21 Jason D. Gellman  
22 ROSHKA DEWULF & PATTEN, PLC.  
23 One Arizona Center  
24 400 East Van Buren Street, Suite 800  
25 Phoenix, Arizona 85004

26 and

27 Philip J. Dion  
Melody Gilkey  
UniSource Energy Services  
One South Church Avenue, Suite 200  
Tucson, Arizona 85702

Attorneys for UNS Electric, Inc.

1 Original and thirteen copies of the foregoing  
2 filed this 12<sup>th</sup> day of April 2010, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copies of the foregoing  
8 mailed this 12<sup>th</sup> day of April 2010, to:

9 Marshall Magruder  
10 P. O. Box 1267  
11 Tubac, Arizona 85646

12 Jane Rodda, Esq.  
13 Administrative Law Judge  
14 Arizona Corporations Commission  
15 400 West Congress Street  
16 Tucson, AZ 85701

17 Janice Alward, Esq.  
18 Chief Counsel, Legal Division  
19 Arizona Corporation Commission  
20 1200 West Washington  
21 Phoenix, AZ 85007

22 Steve Olea  
23 Director Utilities Division  
24 Arizona Corporation Commission  
25 1200 West Washington  
26 Phoenix, AZ 85007

27 By Abbie Amarel

# Exhibit

**"1"**

**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



**ARIZONA CORPORATION COMMISSION**

**ORIGINAL**

**COMPLIANCE MEMORANDUM**

**TO:** Docket Control Center  
**FROM:** Shannon Kanlan *SK*  
Program Project Specialist II  
Utilities Division  
**DATE:** August 26, 2008  
**RE:** **STAFF LETTER OF COMPLIANCE**

**UTILITY:** UNS Electric, Inc.

**DOCKET NO.** E-04204A-06-0783

**DECISION NO.** 70360

This Memorandum to the Docket verifies that on 7/29/08, UNS Electric, Inc. filed the required response to Mr. Magruder's concerns per the above referenced Decision. Staff has reviewed the item and verifies that the filing is in compliance with Commission Order.

Arizona Corporation Commission

**DOCKETED**

**AUG 26 2008**

DOCKETED BY

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ARIZONA CORPORATION COMMISSION  
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Exhibit

“2”

Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

JUN 29 1999

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DOCKETED BY

sd

CITY OF NOGALES, ARIZONA,

DOCKET NO. E-01032B-98-0621

Complainant,

vs.

DECISION NO. 61793

CITIZENS UTILITIES COMPANY, SANTA CRUZ  
ELECTRIC DIVISION,

Respondent.

**ORDER**

Open Meeting  
June 22 & 23, 1999  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 27, 1998, the City of Nogales, Arizona ("Nogales") filed a complaint with the Arizona Corporation Commission ("Commission") against Citizens Utilities Company ("Citizens") concerning electrical outages in Nogales, Arizona.

2. Citizens provides electric utility service to Nogales and Santa Cruz County pursuant to a certificate of Convenience and Necessity granted by the Commission.

3. In the Complaint, Nogales alleged that numerous electric outages caused by Citizens' failure to adequately maintain its transmission lines and back-up generation capacity have resulted in economic damages to Nogales and its residents and endangered the community's welfare

4. On November 18, 1998, Citizens filed its Answer to the Complaint.

5. By Procedural Orders dated December 4 and 9, 1998, the Commission scheduled a hearing on the Complaint for January 21, 1999 in Nogales and scheduled a pre-hearing conference for December 29, 1998.

1           6.     On December 23, 1998, Nogales filed a Motion to Amend its Complaint. At t'  
2 December 29, 1998 pre-hearing conference, Nogales requested that the hearing scheduled on January  
3 21, 1999 be continued. Citizens agreed to the continuance. The parties agreed that Citizens would  
4 have until March 1, 1999 to file an Answer to the Amended Complaint and that another pre-hearing  
5 conference would be held on March 29, 1999 to reschedule the hearing in this matter.

6           7.     On January 21, 1999, the Commission conducted a public comment meeting in  
7 Nogales in connection with this matter.

8           8.     On February 16, 1999, the parties filed a settlement agreement with the Commission,  
9 and on February 25, 1999, the parties filed a Motion to Approve the Settlement Agreement. The  
10 parties requested that the Commission approve the Settlement Agreement without conducting a  
11 hearing, and that the Commission consider the matter at its regularly scheduled March 9 and 10, 1999  
12 Open Meeting.

13           9.     In response to the parties' Motion to Approve the Settlement Agreement, the Hearing  
14 Officer prepared a Recommended Order dismissing the complaint without prejudice, however, a  
15 parties filed exceptions and requested that the recommended order be withdrawn from the Open  
16 Meeting agenda.

17           10.    A pre-hearing conference was held on March 29, 1999, at which time the parties  
18 represented that they continue to try to resolve the complaint and requested a hearing date be set.

19           11.    By Procedural Order dated April 6, 1999, a hearing was scheduled for June 8, 1999, in  
20 Nogales in the event the parties were not able to agree to dismiss the complaint.

21           12.    On June 2, 1999, Nogales filed a Motion to Dismiss Amended Complaint with  
22 Prejudice and a copy of a Revised Settlement Agreement between the parties. A copy of the Revised  
23 Settlement Agreement is attached hereto as Exhibit A, and incorporated by reference. In its Motion,  
24 Nogales asserts that the Revised Settlement Agreement resolves all outstanding claims that were  
25 brought or might have been brought in its Amended Complaint against Citizens and requests that the  
26 Commission dismiss the Amended Complaint with prejudice.  
27  
28

13. Under the terms of the Revised Settlement Agreement, Citizens will:

- (a) fund direct payments of \$15 to all customers in Santa Cruz County;
- (b) provide a neutral claims resolution procedure for all customers in Santa Cruz County;
- (c) fund low income relief for Nogales residents;
- (d) fund Santa Cruz County economic-development efforts; and
- (e) fund four-year, interest free loans for Santa Cruz County high school graduates.

Citizens and Nogales will:

- (a) create a Citizens Advisory Counsel;
- (b) collaborate to determine the order in which circuits are energized in the event of future transmission-related outages;
- (c) develop a mutually acceptable service upgrade plan for submission to the Commission; and
- (d) negotiate a mutually acceptable 25-year franchise for Citizens.

14. Under the terms of the Revised Settlement Agreement, Nogales will dismiss its Amended Complaint with prejudice.

15. In separate dockets,<sup>1</sup> Citizens has requested Commission approval to separate into two separate companies ("Citizens' Separation Dockets"). The Commission has requested Citizens to file its plan to address Santa Cruz County electric service issues in the Citizens Separation Dockets and by Procedural Order dated April 29, 1999, Citizens was directed to file a final engineering plan regarding the Santa Cruz Electric Division, according to the directives in Decision No. 61383 by June 11, 1999.

16. Citizens has subsequently requested withdrawal of its application in the "Separations

<sup>1</sup> In the Matter of the Joint Notice of Intent of Citizens Utilities Company, Citizens Telecommunications of the White Mountains, Navajo Communications Company, Inc., Citizens Utilities Rural Company, Inc., Citizens Telecommunications Company, Sun City Sewer Company, Sun City Water Company, Sun City West Utilities Company, Citizens Water Service Company of Arizona, Citizens Water Resources Company of Arizona, Tubac Valley Water Company, Inc. and Electric Lightwave, Inc. to Organize a Public Utility Holding Company and for Related Approvals of Waivers Pursuant to R14-2-801, et seq., Docket Nos. E-01032A-98-0611, T-03214A-98-0611, T-02115B-98-0611, T01954B-98-0611, T-02755A-98-0611, SW-2276A-98-0611, W-01656A-98-0611, WS-02334A-98-0611, W-03454A-98-0611, W-03455A-98-0611, W-01595A-98-0611, T-03054A-98-0611.



Docket" to separate into two separate companies. This request has not yet been acted upon.

### CONCLUSIONS OF LAW

1. Citizens is a public service corporation within the meaning of A.R.S. § 40-246.
2. The Commission has jurisdiction over Citizens and the subject matter of the Complaint.
3. The parties have resolved their differences and the Complaint should be dismissed with prejudice.


### ORDER

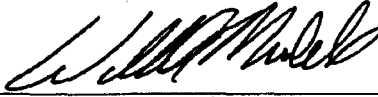
IT IS THEREFORE ORDERED that the Amended Complaint filed by the City of Nogales against Citizens Utilities Company is dismissed with prejudice.

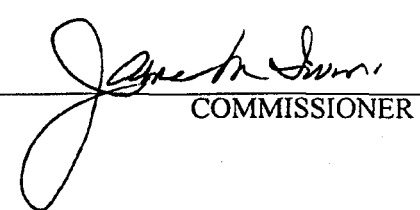
IT IS FURTHER ORDERED that Citizens Utilities Company shall provide a planned service date and cost benefit analysis for the cost of system components of the second transmission line included in its Plan of Action, as directed by Decision No. 68183, in the "Separation Docket".

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 29<sup>th</sup> day of June, 1999.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
JR:dap

1 SERVICE LIST FOR:

CITY OF NOGALES vs. CITIZENS UTILITIES  
COMPANY, SANTA CRUZ ELECTRIC DIVISION

2  
3 DOCKET NO.

E-01032B-98-0621

4 Hugh Holub  
5 City Attorney  
6 CITY OF NOGALES  
777 N. Grand Avenue  
Nogales, Arizona 85621

7 Craig Marks  
8 CITIZENS UTILITIES CO.  
2901 N. Central Avenue, Suite 1660  
Phoenix, Arizona 85012

9 Lawrence V. Robertson Jr.  
10 MUNGER & CHADWICK. PLC  
National Bank Plaza  
11 333 North Wilmot, Suite 300  
Tucson, Arizona 85711

12 Scott Wakefield  
13 RUCO  
2828 N. Central Avenue, Suite 1200  
14 Phoenix, Arizona 85012

15 Paul Bullis, Chief Counsel  
ARIZONA CORPORATION COMMISSION  
16 1200 W. Washington Street  
Phoenix, Arizona 85007

17 Director, Utilities Division  
18 ARIZONA CORPORATION COMISSION  
1200 W. Washington Street  
19 Phoenix, Arizona 85007

20

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
CHAIRMAN  
TONY WEST  
COMMISSIONER  
JIM IRVIN  
COMMISSIONER

IN THE MATTER OF A COMPLAINT BY  
THE CITY OF NOGALES, ARIZONA  
AGAINST CITIZENS UTILITIES  
COMPANY, SANTA CRUZ ELECTRIC  
DIVISION.

DOCKET NO. E-01032B-98-0621

**REVISED SETTLEMENT  
AGREEMENT BETWEEN CITY OF  
NOGALES, ARIZONA, AND  
CITIZENS UTILITIES COMPANY**

**RECITALS**

A. As a result of extensive discussions, the City of Nogales, Arizona ("City"), and Citizens Utilities Company ("Citizens"), (collectively, the "Parties") have agreed to resolve all issues raised in or relating to the City's Complaint before the Arizona Corporation Commission ("Commission").

B. Citizens will be providing compensation to the City and its customers for past damages relating to its provision of electric service by:

1. Funding direct payments to all customers in Santa Cruz County (Article 1);
2. Providing a neutral claims resolution procedure for all customers in Santa Cruz County (Article 2);
3. Funding low income relief for City Residents (Article 6);
4. Funding Santa Cruz County economic-development efforts (Article 7);
5. Funding four-year, interest free, loans for Santa Cruz County high school graduates that will be forgiven if the student returns to live and work in the County (Article 9).

Appendix "A"

DECISION NO. 61793

C. To improve future electric service and improve community relations, Citizens and the City will:

1. Create a Citizens Advisory Council (Article 3);
2. Collaborate to determine the order in which circuits are energized in the event of future transmission-related outages (Article 4);
3. Develop a mutually acceptable Service Upgrade Plan for submission to the Commission (Article 5);
4. Negotiate a mutually acceptable 25-year franchise for Citizens (Article 8).

D. The City will dismiss its complaint in the above-captioned docket with prejudice (Article 10).

#### **AGREEMENT**

The Parties agree as follows:

**1. Customer Payments**

To compensate Citizens' Santa Cruz County electric customers (including customers located within the City of Nogales) for the inconvenience and miscellaneous expenses resulting from electric outages before the date of this Agreement, Citizens will pay each customer as damages, the sum of \$15, as provided in this Article 1. Citizens has previously paid a lump sum to the City of \$188,700.00 (equal to \$15 times the number of Citizens' Santa Cruz County electric customers as of January 31, 1999.) Citizens has also previously provided the City a mailing list containing each customer's name and billing address. The City will distribute \$15 to each listed customer. Payments made under this section are separate from any that a customer might receive under Section 2, below.

The City recognizes that in the era of electric deregulation, Citizens' mailing list consists of proprietary, commercially-sensitive information. Accordingly, the City will:

- a) keep Citizens' customer list confidential;
- b) use it for no other purpose than to carry out its obligations under this Section;
- c) make no copies except as necessary for that purpose; and
- d) return the list, together with any copies, to Citizens once those obligations are carried out.

## **2. Claims Resolution Procedure**

After the City distributes the damage payments described in Section 1, Citizens will promptly mail to all its Santa Cruz County electric customers a copy of the damage claim form previously submitted to the City, together with (i) the instructions that were prepared by the City and (ii) a listing of all significant power outages occurring in Santa Cruz County since July 1998, by date, location, time and duration. Customers will be instructed where to send any claims for damages and the deadline (at least 45 days after receipt) for submitting claims. Customers will also be instructed that if Citizens and the customer are unable to resolve the disputed claim, the claim will be submitted to a neutral third-party arbitrator, acceptable to Citizens and the City, for prompt resolution. The third party's decision will be final.

At the time the damage claim forms are mailed, Citizens will also place a one- quarter page advertisement in appropriate local media that includes a copy of the form and accompanying instructions. Citizens will repeat the advertisement, approximately three weeks after the initial publication. Beginning approximately two weeks after the forms are sent out, Citizens will include a bill insert with bills rendered during its next billing cycle to remind customers of the deadline for submitting claims. Forms and instructions will also be made available in all bill-paying offices.

**3. Citizens Advisory Council**

The City and Citizens will work to promptly create a Citizens Advisory Council ("CAC"). The CAC will be made up of a representative from Citizens, a representative from the City and other members representing various customer constituencies. The Commission Staff will be encouraged to participate as a full member.

The CAC will meet regularly (as agreed by its members) to discuss electric and gas service issues, upcoming Commission filings and other topics of mutual interest such as electric deregulation and demand-side management. The CAC will also assist Citizens in evaluating alternatives for long-term electric reliability in Santa Cruz County, such as a second transmission line, and recommend a preferred alternative to Citizens and the Commission.

**4. Back-up Generation**

Citizens will collaborate with the City to determine the initial order in which circuits are energized in the event of an outage on the Western Area Power Administration line or Citizens' 115 kV sub-transmission line that requires Citizens' gas-fired turbines to be energized. The purpose of this collaboration is to ensure that the highest-priority circuits (such as hospitals, utilities, and public services) come on-line first. This topic will also be periodically reviewed by the CAC. In collaboration with the CAC, Citizens will evaluate whether to keep generation in spinning reserve during inclement weather. The City will support any amendments to Citizens' current air quality permit that are needed to accommodate any resulting increased usage of the gas-fired turbines.

**5. Citizens' 1996-2001 Service Upgrades**

Citizens will prepare a detailed summary of all activities taken and funds expended to improve service quality in Santa Cruz County from January 1, 1996, to the date of the summary ("Service Upgrade Plan"). The Service Upgrade Plan

will also include activities to be taken and funds to be expended during the balance of 1999, and the years 2000 and 2001. Supporting detail will be included in an Appendix or Appendices to the Service Upgrade Plan.

Citizens will submit a draft Service Upgrade Plan for comments to the City and the Residential Utility Consumer Office ("RUCO"). RUCO is an independent state agency, funded by assessments upon Arizona's utilities that is charged with representing the interests of residential utility consumers in regulatory proceedings before the Commission. RUCO employs a knowledgeable and experienced staff, including Prem Bahl, formerly the Commission's chief electrical engineer.

Citizens will promptly respond to any requests for information received from the City or RUCO concerning the Service Upgrade Plan or other issues of electric service quality. RUCO will independently evaluate whether the activities and expenditures described in the Service Upgrade Plan are and will be adequate to provide the residents of Santa Cruz County with safe, reliable, high quality electric service.

Citizens, the City, and RUCO will then develop a mutually-acceptable final Service Upgrade Plan. At RUCO's request, Citizens will compensate RUCO for its expenses associated with reviewing and commenting on the Plan. In the Commission dockets that are addressing Citizens' requested separation into two separate companies ("Citizens' Separation Dockets"<sup>1</sup>), the Commission has asked Citizens to file its plan to address Santa Cruz County electric service issues.

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<sup>1</sup> In The Matter Of The Joint Notice Of Intent Of Citizens Utilities Company, Citizens Telecommunications Of The White Mountains, Navajo Communications Company, Inc., Citizens Utilities Rural Company, Inc., Citizens Telecommunications Company, Sun City Sewer Company, Sun City Water Company, Sun City West Utilities Company, Citizens Water Service Company Of Arizona, Citizens Water Resources Company Of Arizona, Tubac Valley Water Company, Inc., And Electric Lightwave, Inc. To Organize A Public Utility Holding Company And For Related Approvals Or Waivers Pursuant To R14-2-801, *Et Seq.*, Docket Nos. E-01032A-98-0611, T-03214A-98-0611, T-02115B-98-0611, T-01954B-98-0611, T-02755A-98-0611, SW-2276A-98-0611, W-01656A-98-0611, WS-02334A-98-0611, W-03454A-98-0611, W-03455A-98-0611, W-01595A-98-0611, T-03054A-98-0611.

Citizens will file the final Service Upgrade Plan for approval in Citizens' Separation Dockets.

**6. Low-Income Relief**

Mayor Cesar Rios and other concerned Nogales citizens have been providing emergency relief to assist low-income residents obtain and retain utility services, food, housing, and other basic human needs. Citizens will donate \$30,000 in cash and \$20,000 in in-kind services to assist this noteworthy effort. The City will formalize Mayor Rios' outreach by creating a charity that will be qualified under IRS section 501(c)(3).

Within 30 days of the Parties' execution of this Revised Settlement Agreement, Citizens will provide \$15,000 of the cash donation. The balance of the cash donation will be provided within 30 days of the charity's qualification under section 501(c)(3). Based upon availability of materials and personnel, the in-kind services will be provided as needed during the one-year period following the Parties' execution of this Revised Settlement Agreement.

**7. Economic Development**

The City intends to create an Economic Development Roundtable to develop needed infrastructure, attract new commercial and industrial businesses and to apply for and receive federal and state grant money. As seed money for the Roundtable, Citizens has contributed \$150,000. Citizens will contribute an additional \$100,000 by January 31, 2000. The Roundtable is expected to be self-sufficient by the beginning of the year 2001. Citizens will provide one representative to the Roundtable. During the period 1999-2000, Citizens will also fund two economic development trips within North America (up to one week), for up to four Roundtable representatives each trip.

Working with the Roundtable and the CAC, Citizens will develop new-business-incentive-rate tariffs intended to attract new businesses to Santa Cruz



County and will evaluate appropriate changes to existing commercial and industrial tariffs. Any resulting changes will be filed with the Commission for approval.

**8. Franchise**

Citizens is presently operating in the City of Nogales without a franchise. In response to Citizens' good-faith compliance with the terms of this Agreement, the Parties will work together to negotiate a mutually acceptable, 25-year franchise to submit to City voters for their approval.

**9. Educational Support**

A skilled, knowledgeable work force will be a key to Santa Cruz County's success in the 21<sup>st</sup> century. Following the Parties' execution of this Revised Settlement Agreement, the City and Citizens will work together to develop an educational assistance program to assist worthy Santa Cruz County high-school seniors attend the Arizona college of their choice. Each year, the program will select one County senior for a four-year, interest free loan to assist with tuition, books, and miscellaneous college expenses. If, following graduation, the student returns to Santa Cruz County to live and work, the loan will be forgiven. Citizens will contribute \$3000 per year, per student, toward this program. Other contributions will be solicited from other benefactors to expand this program even further, such as to cover some portion of room and board, graduate school, or vocational programs.

**10. Miscellaneous**

This Revised Settlement Agreement resolves all outstanding claims and issues that were brought or might have been brought in Docket No. E-01032B-98-0621. The City will expeditiously move to dismiss its Complaint in this docket with prejudice. Citizens' activities under this Revised Settlement Agreement remain subject to the continuing jurisdiction of the Commission, by virtue of Citizens' status as a public service corporation under Arizona law.

This Revised Settlement Agreement is a compromise and settlement of disputed claims and issues. By signing this Revised Settlement Agreement, neither Party admits any liability in respect to any matter. Further, neither of the Parties compromises or otherwise waives the positions they have taken or might take on any issue.

This Revised Settlement Agreement binds the successors and assigns of the Parties. The provisions of this Revised Settlement Agreement are not severable.

**ACCEPTED:****Citizens Utilities Company**

Dated June 6<sup>th</sup>, 1999

End V. O. J. For J. Michael Love  
J. Michael Love  
President, Citizens Utilities Company  
Public Services Sector

**City of Nogales, Arizona**

Dated June 1<sup>st</sup>, 1999

Cesar Rios  
Cesar Rios  
Mayor, City of Nogales

# Exhibit

"3"

**ASSET PURCHASE AGREEMENT**

by and between

CITIZENS COMMUNICATIONS COMPANY, as SELLER,

and

UNISOURCE ENERGY CORPORATION, as BUYER,

Dated October 29, 2002

---

*Relating to Purchase by Buyer of Seller's  
Electric Utility Business in the State of Arizona*

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- (j) all deferred tax assets or collectibles;
- (k) any insurance policy, bond, letter of credit or similar item, and any cash surrender value in regard thereto;
- (l) except as otherwise set forth in Section 6.12, assets attributable to or related to a Benefit Plan; and
- (m) all other assets listed in Schedule 2.2 hereto.

2.3 Assumed Liabilities. On the Closing Date, Buyer or the UniSource Designee acquiring the Assets shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer or such UniSource Designee shall assume and agree to discharge when due, without recourse to Seller, in accordance with the respective terms and subject to the respective conditions thereof, all of the Assumed Liabilities. All of the following liabilities and obligations of Seller or Buyer which relate to, or arise by virtue of Seller's or Buyer's ownership of the Assets or operation of the Business (other than Excluded Liabilities) are referred to collectively as the "Assumed Liabilities":

(a) all liabilities and obligations of Seller or Buyer arising on or after the Closing Date under the Assigned Agreements, the Real Property Leases, and the Transferable Permits in accordance with the terms thereof, including, without limitation, the Assigned Agreements entered into by Seller (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date and are not otherwise included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3 or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time or both would constitute a default by Seller;

(b) all liabilities and obligations of Seller for accounts payable to the extent included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(c) all liabilities and obligations associated with the Assets or the Business in respect of Taxes for which Buyer is liable pursuant to Section 3.4 or 6.10(a) hereof;

(d) all liabilities and obligations of Seller or Buyer with respect to the Transferred Employees incurred on or after the Closing Date for which Buyer is responsible pursuant to Section 6.12;

(e) all liabilities, responsibilities and obligations of Seller or Buyer arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation is known or unknown, contingent or accrued as of the Closing Date, including but not limited to: (i) costs of compliance (including capital, operating and other costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after the Closing Date, with respect to the

ownership of the Assets or operation of the Business; (ii) property damage or natural resource damage (whether such damages were manifested before or after the Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any Assets prior to, on or after the Closing Date; (iii) any Remediation (whether or not such Remediation commenced before the Closing Date or commences after the Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after the Closing Date, at, on, in, adjacent to or migrating from the Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the Closing Date with respect to the ownership of any Assets or operation of the Business; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any Asset on or after the Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership or operation of the Assets; provided, that nothing set forth in this Section 2.3 shall require Buyer to assume any liabilities, responsibilities or obligations that are expressly excluded in Section 2.4;

(f) any Tax that may be imposed by any federal, state or local government on the ownership, sale (except as otherwise provided in Section 3.4 or 6.10(a)), operation of the Business or use of the Assets on or after the Closing Date, except for any Income Taxes attributable to the income of Seller;

(g) all liabilities and obligations of Seller or Buyer arising on and after the Closing Date under those Orders specifically relating to the Assets or the Business issued by or entered into with any Governmental Authority and listed in Schedule 2.3(g) or imposed on Buyer in any Required Regulatory Approval;

(h) customer advances, customer deposits and construction advances, unperformed service obligations, Easement relocation obligations, and engineering and construction required to complete scheduled construction, construction work in progress, and other capital expenditure projects, in each case directly related to the Business and outstanding on or arising after the Closing Date; and

(i) actions and proceedings based on conduct, actions, circumstances or conditions arising or occurring on or after the Closing Date, actions and proceedings described in Schedule 2.3(i), actions and proceedings arising from or directly related to any other Assumed Liability, and generic or industry-wide actions and proceedings outstanding on or arising on or after the Closing Date that are applicable to the Business.

SCHEDULE 2.3(i)

ASSUMED ACTIONS AND PROCEEDINGS

1. Opinion and Order of the Arizona Corporation Commission (Decision No. 62011), dated November 2, 1999, approving Settlement Agreement, dated August 9, 1999, re: Santa Cruz Electric Division Plan of Action. (Settlement Agreement requires Buyer to fulfill Citizens Communications Company's obligations with respect to a second transmission line as a condition to the Arizona Corporation Commission's approval of sale.)
2. ~~Order of the Arizona Corporation Commission (Decision No. 61793), dated June 29, 1999, re: Revised Settlement Agreement, dated June 1, 1999, between City of Nogales, Arizona, and Citizens Communications Company.~~ Intentionally deleted. (Note: No issues are open regarding this matter. The Nogales' complaint was dismissed with prejudice.)
3. The pending regulatory proceedings listed in Part I of Schedule 4.12 are incorporated herein by reference.
4. In the Matter of Joint Application of Tucson Electric Power Company and Citizens Communications Company or their assignee(s) for a Certificate of Environmental Capability for a Proposed 345 kV Transmission Line System, Docket No. L-00000C-01-0111 and Docket No. L-00000F-01-0111.